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WESTERN DISTRICT OF WASHINGTON AT TACOMA

UNITED STATES DISTRICT COURT

BRIAN DAVID MATTHEWS,

Plaintiff,

v.

JOHN DOE THORNHILL, et al.,

Defendants.

Case No. C07-5376RJB

ORDER ON PENDING MOTIONS

Due to the fact that Plaintiff filed an Amended Complaint (Doc. 52) during the objection period, the Court rejected the report and recommendation on Defendants' Motion to Dismiss Plaintiff's claims and causes of action contained in the original Complaint (Doc. 4). After reviewing the record, the undersigned now finds and orders as follows:

- (1) The filing of the Amended Complaint and the order issued on February 22, 2008, essentially restarts this matter from the beginning. Accordingly, Defendants shall serve and file their Answer, or response, to the Amended Complaint by not later than **April 18, 2008**.
- (2) Plaintiff's pending motions are each **DENIED**. The motions request either enter of default and/or default judgment. The Federal Rules of Civil Procedure require defendants to answer a complaint within twenty (20) days from the date being served with the summons and complaint, or if service of the summons was timely waived, within sixty (60) days after the date when the request for waiver was sent. Fed. R. Civ. P. 12(a). If a defendant fails to respond within that time, a default judgment may be entered. Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986), *cert. denied*, 108 S.Ct. 198 (1987). Default judgments

ORDER Page - 1 are generally disfavored and the court prefers a decision on the merits, <u>In re Hammer</u>, 940 F.2d 524, 525 (9th Cir. 1991).

Given the procedural history of this matter, i.e., the timing of the filing of the Amended Complaint while the report and recommendation on the original Complaint was pending before the Court, the undersigned finds it would be inequitable to impose any kind of default on defendants for their alleged failure to answer or otherwise respond to the Amended Complaint. As noted above the court has set a due date for defendants to file and serve an Answer to the Amended Complaint, and this matter should proceed from that new beginning point.

- (3) The Clerk is directed to docket the Amended Complaint (Doc. 52) as such, rather than as a proposed document. Following receipt of Defendant's Answer, or other response, to the Amended Complaint, the court will issue a new pretrial scheduling order, setting a new discovery and dispositive motion deadline in this matter.
 - (4) The Clerk is directed to send copies of this Order to plaintiff and to counsel for defendant(s). DATED this 18th day of March, 2008.

/s/ J. Kelley Arnold

J. Kelley Arnold

United States Magistrate Judge